

## **Remarks**

Claims 1-11 remain pending. Claims 1-4 are allowed. Claims 5-11 stand rejected. Claims 5, 8 and 11 are amended herein. The Assignee respectfully traverses the rejections and requests allowance of claims 1-11.

### **Claim Amendments**

Independent claim 5 is amended to indicate that the current capacity referenced therein is *representative of a thermal response* of the pipelined processor. This amendment is supported in the current application at paragraph [0015]. (“The output rate represents the steady state power dissipation; while the input rate is controlled based upon the current capacity, representing thermal response.”)

Claims 8 and 11 are amended to correct the spelling of the word “multiplied.”

### **Obviousness-Type Double Patenting Rejection**

Claims 5-11 stand rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1, 10, 13, 14, 16 and 17 of U.S. Patent No. 6,651,176. (Page 2 of the Office action.) In response, a terminal disclaimer in compliance with 37 C.F.R. § 1.321(c), along with an authorization to charge the associated fee under 37 C.F.R. § 1.20(d), is being filed herewith. Please note that submission of the terminal disclaimer is not an admission of obviousness of any claim of the present application in view of U.S. Patent No. 6,651,176, but represents an effort to expedite allowance of the claims.

### **Claim Rejection Under 35 U.S.C. § 102**

Claims 5 and 10 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,367,023 to Kling et al. (hereinafter “Kling”). (Page 3 of the Office action.) The Assignee respectfully traverses the rejections in light of the current amendment to independent claim 5, and in view of the following discussion.

Amended claim 5 now indicates that the current capacity of the pipelined processor that is compared to a threshold is *representative of a thermal response of the processor*. In other words, the current capacity is indicative of the amount of heat currently associated with the

processor.

Kling generally provides methods for “managing the power consumed in a computer system.” (Column 1, lines 50 and 51.) To this end, “the *power consumed* by at least a portion of a computer system is monitored by measuring a parameter that is approximately proportional to the consumed power, such as *voltage, current, or the duty cycle of a switching signal in a power supply.*” (Column 2, lines 33-37; emphasis supplied.) Thus, Kling measures the actual power consumed, or some parameter associated closely therewith, to determine *power consumption*. This measurement of power consumption, such as that of a processor, is distinguished from a current capacity representative of a *thermal response* of the processor. One example of calculating the capacity is shown graphically in the logic diagram of Fig. 6, in which an issue weight of each instruction is added to the current capacity, while a thermal “bleed” rate is subtracted therefrom, thus determining the thermal response. (Please see paragraphs [0048] through [0052].) Kling, on the other hand, just measures *power consumption* or other parameter related closely thereto, and does not measure, calculate or otherwise track the thermal response of the component in question. While power consumption may be related in some fashion to the thermal response for a particular component, some components may have a very different thermal response than others for the same amount of power consumption. For example, components with a higher thermal bleed rate are likely to be able to consume more power before heating up to the same level as another component with a lower bleed rate.

Thus, based on at least these reasons, the Assignee contends that amended claim 5 is allowable in view of Kling, and such indication is respectfully requested.

Claim 10 depends from, and thus incorporates the provisions of, independent claim 5. Thus, the Assignee asserts that claim 10 is allowable for at least the reasons presented above in support of claim 5, and such indication is respectfully requested.

Therefore, in light of the foregoing, the Assignee respectfully requests withdrawal of the 35 U.S.C. § 102 rejection of claims 5 and 10.

#### Indication of Allowable Subject Matter

The Office action indicates that claims 1-4 are allowable over the art of record. (Page 4 of the Office action.) As a result, the patentability of these claims is not discussed herein. Further, the Assignee thanks the Examiner for his consideration of these claims.

Conclusion

Based on the above remarks, the Assignee submits that claims 1-11 are allowable. The Assignee thus respectfully requests allowance of claims 1-11.

The Assignee authorizes the Office to charge Deposit Account No. 08-2025 the fee under 37 C.F.R. § 1.20(d) for the enclosed terminal disclaimer submitted under 37 C.F.R. § 1.321(c). The Assignee believes no additional fees are due with respect to this filing. However, should the Office determine additional fees are necessary, the Office is hereby authorized to charge Deposit Account No. 08-2025.

Respectfully submitted,

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**SIGNATURE OF PRACTITIONER**

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